In the

Supreme Court of the United States

October Term, 1961

No. 62-5

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Petitioner,

v.

A. S. HARRISON, JR., ETC., ET AL.,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Dated: February 24, 1961

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I.

STATEMENT OF CASE

As pointed out in the petition for writ of certiorari, the NAACP is a non-profit corporation organized under the laws of the State of New York. It is a political association for those who oppose racial discrimination.

The Statement of the petitioner ignores for the most part a large portion of the record which the Supreme Court of Appeals of Virginia considered in its opinion. This was the *ore tenus* testimony taken during the trial of the case in the Circuit Court of the City of Richmond. For this reason,

the respondents feel compelled to set forth a rather full statement of the facts of this case.

Speaking of the legal activity of the NAACP, Roy Wilkins testified in the federal district court:

> "Well, under legal activity we have sought to assist in securing the constitutional rights of citizens which may have been impaired or infringed upon or denied. We have offered assistance in the securing of such rights. Where there has been apparently a denial of those rights, we have offered assistance to go to court and establish under the Constitution or under the federal laws or according to the federal processes, to seek the restoration of those rights to an aggrieved party." (Fed. Tr., pp. 170-71)[1]

Wilkins further testified that in assisting plaintiffs "we would either offer them a lawyer to handle their case or to help to handle their case and pay that lawyer ourselves, or we would advise them, if they had their own lawyer, would advise with them or assist in the costs of the case" (Fed. Tr., p. 177). No money ever passes directly to the plaintiff or litigant (Fed. Tr., p. 177).

The NAACP does not ask a person if he wishes to challenge a law. However, it does say publicly that it believes that a certain law is invalid and should be challenged in the courts. Negroes are urged to challenge such laws and if one steps forward, the NAACP agrees to assist (Fed. Tr., p. 178).

Although it is not in the regular course of business, pre-

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[1] "Fed. Tr., p. ...." refers to the pages of the two volumes of the printed record in this Court in *NAACP* v. *Harrison*, October Term, 1958, No. 127, 360 U. S. 167, as introduced by the petitioner in the trial of this case in the Circuit Court of the City of Richmond, Virginia and marked plaintiff's exhibit R-9.

pared papers have been submitted at NAACP meetings authorizing someone to act in bringing lawsuits and the people in attendance have been urged to sign (Fed. Tr., p. 180).

Robert L. Carter, General Counsel for the NAACP, is paid to handle legal affairs for the corporation. Representation of the various Virginia plaintiffs falls within his duties (Fed. Tr., p. 204).

The NAACP offers "legal advice and assistance and counsel, and Mr. Carter is one of the commodities" (Fed. Tr., p. 204).

Thurgood Marshall was Special Counsel for the NAACP prior to 1957 and it was his job "to advise with lawyers and the people in regard to their legal rights and to render whatever legal assistance could be rendered" (Fed. Tr., p. 312).

The Virginia State Conference of the NAACP has a legal staff composed of fifteen members and in every instance except two the plaintiffs have been represented by members of such staff in cases in which assistance is given.

All prospective plaintiffs are referred to the Chairman of the Legal Staff, Oliver W. Hill, and counsel for such plaintiffs makes his appearance when Hill has recommended that they have a "legitimate situation that the NAACP should be interested in" (Fed. Tr., p. 152).

The State Conference assists in cases involving discrimination and the Executive Board formulates certain policies to be applied in determining whether assistance will be given. Hill then applies these policies and when he decides that the case is a proper one, it is taken "automatically" with the concurrence of the President (Fed. Tr., p. 156).

Members of the Legal Staff of the State Conference may attend meetings held by the branches in their capacity as

counsel for the Conference and either the particular branch or the State Conference pay the traveling expenses incurred (Fed. Tr., p. 164).

Oliver W. Hill testified that he is not compensated as chairman of the Legal Staff. It is his duty to advise Negroes who come to him voluntarily "or directly from some local branch, or after having been directed there by Mr. Banks"[2] whether or not he will recommend to the State Conference that their case will be accepted (Fed. Tr., p. 207).

After a case is accepted, Hill selects the lawyer (Fed. Tr., p. 209). He refers the case to a member of the Legal Staff residing in the particular area from which the complaining party came. For the Richmond area, "one of us would frequently handle the situation" (Fed. Tr., p. 208).[3]

A bill for the legal services is submitted to Hill who approves it with the concurrence of the President of the State Conference (Fed. Tr., pp. 209-10).

Hill further stated that no investigation is made as to the ability of the plaintiffs to pay the cost of litigation. He feels that irrespective of wealth, a person has the right "to get cooperative action in these cases" (Fed. Tr., p. 222).

At the trial of these cases in the trial court below, W. Lester Banks testified on cross-examination that none of the school segregation cases were referred to Oliver W. Hill, Chairman of the Legal Committee of the State Conference, by him. In every instance the individual plaintiffs made con-

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[2] Mr. Banks is executive secretary of the Virginia State Conference of the NAACP.

[3] It should be noted that Hill as well as Spottswood W. Robinson, III, also a member of the Legal Staff of the State Conference, both being residents of Richmond, not only represented all the plaintiffs as counsel of record in the Prince Edward, Arlington, Charlottesville, Newport News and Norfolk school segregation cases, but took active and leading parts in the trial of said cases.

tact with Hill or other members of his legal staff, and not through the Virginia State Conference (R. p. 63).[4]

Generally, plaintiffs in the school segregation cases do not contribute toward expenses and legal fees though they are solicited and do contribute in the NAACP's Freedom Fund (R. p. 72).

Banks, as Executive Secretary of the State Conference, speaks at meetings and urges citizens to look about them for discriminatory conditions, as do other representatives of the Conference. Individuals are also urged to assert their constitutional rights (R. p. 75).

The chairman of the legal staff (Hill) approves every item of expense and all legal fees paid by the Conference. The president of the Conference approves the legal fees and expenses of Chairman Hill. Further, in every instance, the president has approved the recommendations of the chairman (R. p. 94).

The legal staff became an official committee of the State Conference in 1945 or 1946 (R. p. 102). Its members are elected at the annual convention of the State Conference after being nominated by a nominating committee which, in turn, gets its recommendations for candidates from the legal staff (R. p. 103). The legal committee, in a sense, perpetuates itself in this manner since there has never been additional nominations from the floor of the Convention (R. p. 104).

Lawyers who wish to become members of the legal committee of the State Conference may request the president of his local branch to recommend him to the committee or he may be recommended by a member of the legal committee (R. p. 104).

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[4] "R. p. ...." refers to the printed record in the court below consisting, in part, of the transcript taken in the Circuit Court of the City of Richmond, Virginia.

Without exception, when a member of the legal committee brings a lawsuit in his community he requests other members of the committee to be associated with him (R. p. 106).

The State Conference pays the expenses and fees of its lawyers for each case with the exception of the fees of Robinson which are paid by the "Fund"[5] in the form of an annual retainer (R. pp. 107-108).

The initial contact in the Charlottesville school segregation case was made by the president of the local branch of the NAACP requesting Hill to speak with certain parents of school children residing in Charlottesville (R. p. 109). The parents then signed papers, some of which authorized Hill to represent such parents and their children. Other authorization forms passed out at the meeting were signed with no attorney's name appearing. Hill filled in his name as attorney on these after he returned to his office in Richmond (R. p. 109).

Authorization forms for use in all the school segregation cases were prepared by Hill for his use and the use of other lawyers on the legal committee of the State Conference (R. p. 109). The form was so written as to authorize a particular attorney to associate such other attorneys as he saw fit (R. p. 110).

In the Charlottesville case Hill first associated Robinson, Martin, Ealey and Tucker, the first three being from Richmond and Tucker residing in Emporia, Virginia (R. p. 110). The General Counsel for the NAACP also came down from New York for the trial of the Charlottesville case (R. p. 110). All of the Virginia lawyers were, of course, members of the legal committee of the State Conference

[5] "Fund" refers to the NAACP Legal Defense and Educational Fund, Inc.

and are paid at the rate of $60.00 per day for their services.

Upon examination, Hill conceded that the State Conference could have done without the services of Tucker but "it was felt that it would be advisable and helpful if as many as possible of the lawyers who were in a particular community had some participation in the [school segregation] cases" (R. p. 111). The idea was to train lawyers for future school segregation cases (R. p. 111).

The authorization form used by the litigants in the Prince Edward case authorized the firm of Hill, Martin and Robinson as attorneys. It did not authorize the association of other attorneys (R. p. 120 and plaintiff's exhibits R-12, R-13, R-14 and R-15).[6] However, Hill testified that the General Counsel of the NAACP was associated because:

> "We don't regard the prosecution of a person's constitutional rights with the same strictness that you would regard, say, handling a contract litigation for a particular individual client. This is something that the NAACP was sponsoring. These people are actively connected with the NAACP and known to be, and these people whose rights we are trying to protect and assert are interested in getting the vindication of their rights, and they are not as much concerned about the particular lawyers in the majority of instances—as to the number of lawyers, put it that way—as a client would be who was involved in a particular single piece of private litigation." (R. p. 120)

Hill stated that it was well understood in civil rights cases that members of the NAACP and Negroes are entitled to representation by attorneys on the legal committee of the

[6] Since the opinion of the Supreme Court of Appeals makes reference to facts contained in various exhibits introduced by the NAACP, plaintiff below, and the respondents, defendants below, reference is here made to such exhibits.

State Conference without cost to them (R. pp. 112-113 and 121). Negroes were informed of this by Hill and others in the press, in conventions and in meetings of local branches (R. p. 113).

Hill also testified that it was generally expected that the State Conference would "sponsor" cases as long as the litigants adhered to the principles and policies of the Conference, namely, that a school case must be tried as a direct attack on segregation (R. p. 113).

S. W. Tucker of Emporia, a member of the legal committee of the State Conference, stated that his duties were "to do whatever was necessary to advance our program. That would entail a study of cases, preparation of cases, trial of cases" (R. p. 231). He was never employed or compensated by the State Conference prior to his membership on the legal committee (R. p. 232). He entered Charlottesville and Warren County school segregation cases at the suggestion of Hill and his relationship with Chairman Hill "has been so pleasant and so profitable" (R. pp. 236-237). Tucker further stated that he handled cases all over the state for the Conference and received a per diem of $60.00 for his services (R. p. 237).

The respondents introduced certain exhibits at the trial below to show the policies of the NAACP, the State Conference and its branches, as well as the activities carried on pursuant thereto. For example, exhibit D-10 is a copy of a letter written by the Chairman of the Legal Committee, Oliver W. Hill, to W. Lester Banks, Executive Secretary of the Virginia State Conference concerning the feasibility of NAACP participation in a labor suit involving the State as the plaintiff and Robert Edwards and Willie Savage as defendants. The attorney for the defendants requested financial aid. Hill stated that it was contrary to the policy

of the State Conference to grant financial aid in cases not handled by the NAACP.

Exhibit D-4 is a copy of a letter written by the Executive Secretary of the State Conference dated July 1, 1953, wherein he stated that the NAACP was not a legal aid society. It rendered aid in criminal cases only when innocent Negroes had been charged with a crime solely because of race or color, or had been convicted of a crime when denied a proper jury trial, when a confession had been extorted through use of force, or when the accused had been denied the effective use of counsel. Banks testified that the statements contained in this exhibit still correctly state the policy of the Virginia State Conference (R. p. 222).

Respondents' exhibits D-7 and D-9 show that all members of the NAACP and their attorneys cannot participate in any lawsuit which seeks to secure separate but equal facilities. The contents of exhibit D-9, being a letter from Spottswood W. Robinson, III, to Reverend N. W. McNair, reads as follows:

> "This is with reference to the matter, recently discussed with me, of participation by this office drafting a reply to a letter received by your group by the County School Board of Amelia County.
>
> "Upon our conference you advised that the effort of your group is to obtain consolidation of Negro elementary schools in said county, and that the effort is limited to this objective.
>
> "As you were then advised, it is not possible either for this office or the NAACP to lend assistance in connection with this effort. In June, 1950, the Association adopted a policy requiring that all education cases seek facilities and opportunities on a racially nonsegregated basis. This policy is binding upon all Association attorneys, and it is apparent that the plans of your group do not conform to this policy.

"At your request, Mr. W. Lester Banks, Executive Secretary, Virginia State Conference, NAACP, was contacted, and he is arranging to visit your group at an early date to more fully explain the Association's policy and its recommendation as to educational matters in your county."

Respondents' exhibit D-5 likewise states the policy of the Virginia State Conference which is to eliminate racial segregation in public schools rather than seek separate but equal facilities.

Part of the respondents' exhibit D-1 is a letter dated May 26, 1954, from the Executive Secretary of the Virginia State Conference to all of its members calling for a meeting to be held in Richmond on June 6, 1954, to "develop techniques to put into immediate effect the NAACP's Atlanta Declarations." Banks also stated in this letter: "* * * No conferences, petitions or other negotiations should be engaged in by NAACP or other responsible leaders with local school officials until after the June 6 meeting."

Another letter from the Executive Secretary to the local branches, dated June 16, 1954, dealt with petitions to local school boards and requested the local branches to withhold their proceedings with respect to desegregation until completion of the organization of the State Conference's program. However, forms of petitions prepared by NAACP legal department in New York in collaboration with the attorneys on the legal committee of the State Conference were forwarded to the various local branches directly from New York.

The last part of exhibit D-1 is styled a "confidential directive", dated June 30, 1955, to the local branches and signed by the Executive Secretary of the Virginia State Conference which dealt with the method of processing petitions. It reads in part as follows:

"(1). For your convenience we are enclosing four petitions (2 to the Secretary, and 2 to the President). Upon receipt of the petitions, the Chairman of your Education Committee or another responsible branch official will fill in the appropriate spaces designating (a) County or city, (b) name of School Board, and (c) name of your Division Superintendent. *Do not* fill in the last two lines at the bottom of petition.

"(2). Petitions will be placed only in the hands of highly trusted and responsible persons to secure signatures of *parents* or *guardians* only. Each petition has an attached sheet for the signatures of 35 names and addresses. If a petition bearer needs additional space, provide one or more of the extra sheets being sent under separate cover.

"(3). Petitions are to be signed by *parents* or *guardians* themselves, and if they cannot write someone can sign for them letting them make an (X) mark, but be sure to have a witness to this fact.

"(4). In event a petitioner's handwriting is not *readible*, the bearer of the petition should—in a tactful manner—secure the name and address of the petitioner and attach it to the petition (example: line 15 reads: Mrs. Lucy Wright, Route 1, Box 295, Oldtown, Virginia).

"(5). Signatures should be secured from parents or guardians in all sections of the county or city. Special attention should be given to persons living in *mixed neighborhoods*, or near *formerly white schools*.

"(6). The signing of the petition by a parent or guardian may well be only the first step to an extended court fight. Therefore, discretion and care should be exercised to secure petitioners who will—if need be—go all the way.

"(7). Set an early deadline when petitions will be returned to your Education Committee's Chairman.

The quicker they are returned, the sooner your petition can be filed.

"(8). The Education Committee's Chairman will *forward completed petitions to the Executive Secretary of the State Conference.* The Chairman of the Education Committee, or other responsible branch official will furnish the State Secretary, at the time of transmittal of petitions, the name and location of *meeting site.*

"(9). Immediately upon receipt of petitions by the State Secretary, he will notify all the petitioners and branch officials that an emergency meeting will be held at the meeting site designated by the branch official.

"(10). At that meeting, everyone will be advised as to the next steps. It is absolutely necessary that all of the petitioners be present at this meeting."

The directions quoted above were established and adopted by an emergency southwide NAACP conference held in June, 1955, as shown by the defendants' exhibit D-8. It reads in part as follows:

"* * * It is the job of our branches to see to it that each school board begins to deal with the problem of providing non-discriminatory eduaction. To that end we suggest that each of our branches take the following steps:

"1. File at once a petition with each school board, calling attention to the May 31 decision, requesting that the school board act in accordance with that decision and offering the services of the branch to help the board in solving this problem.

"2. Follow up the petition with periodic inquiries of the board seeking to determine what steps it is making to comply with the Supreme Court decision.

"3. All during June, July, August and September, and thereafter, through meetings, forums, debates, conferences, etc., use every opportunity to explain what the May 31 decision means, and be sure to emphasize that the ultimate determination as to the length of time it will take for desegregation to become a fact in the community is not in the hands of politicians or the school board officials but in the hands of the federal courts.

"*4. Organize the parents in the community so that as many as possible will be familiar with the procedure when and if law suits are begun in behalf of plaintiffs and parents.*

"5. Seek the support of individuals and community groups, particularly in the white community, through churches, labor organizations, civic organizations and personal contact.

"6. When announcement is made of the plans adopted by your school board, get the exact text of the school board's pronouncements and notify the State Conference and the National Office at once so that you will have the benefit of their views as to whether the plan is one which will provide for effective desegregation. It is very important that branches not proceed at this stage without consultation with State offices and the National office.

"*7. If no plans are announced or no steps towards desegregation taken by the time school begins this fall, 1955, the time for a law suit has arrived. At this stage court action is essential because only in this way does the mandate of the Supreme Court that a prompt and reasonable start towards full compliance become fully operative on the school boards in question.*

"*8. At this stage the matter will be turned over to the Legal Department and it will proceed with the matter in court.*" (Emphasis added)

A memorandum written by Banks and introduced and marked as defendants' exhibit D-2 shows that the NAACP and the Virginia State Conference have continued the policies and activities outlined above. It reads in part as follows:

> "IV. *Up to Date Picture of Action by NAACP Branches Since May 31.*
>
> "A. Petitions filed and replies
> A total of 55 branches have circulated petitions.
>
> "B. Where suits are contemplated
> Petitions have been filed in seven (7) counties/ cities. Graduated negative response received in all cases.
>
> "C. Readiness of lawyers for legal action in certain areas
> Selection of suit sites reserved for legal staff.
> State legal staff ready for action in selected areas.
>
> "D. Do branches want legal action
> The majority of our branches are willing to support legal action or any other program leading to early desegregation of schools that may be suggested by the national and state Conference offices. Our branches are alert to overtures by public officials that Negroes accept voluntary racial segregation in public education."

Banks explained that the language, "Where suits are contemplated" referred to places where petitions had been denied by local school boards (R. p. 217). The language

"Readiness of lawyers for legal action in certain areas" meant financial aid was available (R. p. 218). Finally, the language "Selection of suit sites reserved for legal staff" meant that members of the legal committee of the State Conference would pick the places where lawsuits would be brought (R. p. 219).

Barbara S. Marx, one of the plaintiffs in the Arlington school segregation case, testified that she is vice president of the local branch of the NAACP in Arlington County. Before the commencement of the Arlington case she signed a petition which was received by the local branch directly through the mail from the State Conference in Richmond (R. p. 171). The petition was then discussed in a branch meeting and she helped circulate it. Mrs. Marx also talked with Hill and Robinson about whether legal action would follow the refusal of the petition by the school board (R. p. 172). She also stated that she knew that Hill and Robinson would be the lawyers when the time came to file the Arlington school segregation suit (R. pp. 172-173).

Other litigants in the school cases from Arlington, Charlottesville and Newport News were examined by the respondents. All of them, with one exception, stated that they had paid no attorneys' fees and that no bills for services rendered had been submitted. Some declared that they would pay if a bill was rendered, while others said they expected the NAACP to pay the cost of attorneys' fees.

Some of the litigants examined also stated that they had no personal contact with the attorneys of the NAACP. Others stated that NAACP attorneys were used since they were members of the NAACP. Only one litigant stated that she would have brought suit even if the NAACP had not agreed to finance it.

II.

ARGUMENT

The respondents contend that the petition for writ of certiorari should be denied for the following reasons:

1. The state and federal courts did not reach irreconcilable conclusions as to what facts the record disclosed "on virtually the same evidence." Almost two hundred pages of additional testimony was taken during the trial in the state court. Furthermore, many exhibits showing the activities of the petitioner were introduced in the state court. This additional evidence clearly showed that the activities of the petitioner violated Chapter 33, Acts of the General Assembly of Virginia, Extra Session, 1956, and the court below so found.

2. There is no substantial federal question involved. The statute in question does not deny the petitioner, or those associated with it, the freedom to speak or assemble. Its purpose and intent is to regulate the practice of law and prohibit the solicitation of legal business. A State, under its police power, has the right to enact such statutes. *Schware* v. *Board of Bar Examiners*, 353 U. S. 232; *McCloskey* v. *Tobin*, 252 U. S. 107; and *Bradwell* v. *Illinois*, 83 U. S. (16 Wall.) 130.

3. Chapter 33 does not prohibit group sponsorship of litigation. This case does not involve the activities of a legal aid society. The petitioner does not limit its assistance to indigent persons. The petitioner does not make contributions to an individual in order that he may retain an attorney of his choice. The attorneys of the petitioner do not volunteer free legal service in aid of an indigent litigant. The petitioner exercises absolute control over litigation and stands between counsel and client contrary to the canons of

legal ethics. Compare, *Gunnels* v. *Atlanta Bar Association*, 191 Ga. 366, 12 S. E. (2d) 602.

4. The record in this case shows that the petitioner is engaged in fomenting and soliciting legal business in which it is not a party and has no pecuniary right or liability. The petitioner channels legal business to the enrichment of certain lawyers employed by it, at no cost to the litigants and over which the litigants have no control. Courts have unanimously condemned such activities. See, *Re Co-Operative Law Co.*, 198 N. Y. 479, 92 N. E. 15; *In re Maclub of America, Inc.*, 295 Mass. 45, 3 N. E. (2d) 272; *People ex rel. Courtney* v. *Association of Real Estate Taxpayers*, 354 Ill. 102, 187 N. E. 823; *People ex rel. Chicago Bar Association* v. *Chicago Motor Club*, 362 Ill. 50, 199 N. E. 1; *Doughtty* v. *Grills*, 37 Tenn. App. 63, 260 S. W. (2d) 379; *Hildebrand* v. *State Bar of California*, 36 Cal. (2d) 504, 225 P. (2d) 508; *Atchison, Topeka & Santa Fe Railway Company* v. *Jackson* (10 Cir.), 235 F. (2d) 390; *In re Brotherhood of Railroad Trainmen*, 13 Ill. (2d) 391, 150 N. E. (2d) 163; and *Richmond Ass'n of Credit Men* v. *Bar Association*, 167 Va. 327, 189 S. E. 153.

III.

CONCLUSION

For reasons set forth above it is respectfully submitted that the petition should be denied.

Respectfully submitted,

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Dated: February 24, 1961

CERTIFICATE OF SERVICE

I hereby certify, in accordance with paragraph 1 of Rule 33, of Revised Rules of the Supreme Court of the United States, that copies of the aforegoing brief have been mailed this 24th day of February, 1961 to Robert L. Carter, 20 West 40th Street, N. Y. 18, N. Y. and to Oliver W. Hill, 214 East Clay Street, Richmond 19, Virginia, Counsel of record for the petitioner, by depositing them in a United States mail box with first class postage prepaid.

HENRY T. WICKHAM